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10/813,174	03/31/2004	Minoru Kawahara	SON-2966	4459

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EXAMINER	
GUPTA, PARUL H	
ART UNIT	PAPER NUMBER
2627	
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07/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/813,174	KAWAHARA, MINORU	
	Examiner	Art Unit	
	Parul Gupta	2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-9 are pending for examination as interpreted by the examiner. The amendment and arguments filed on 5/2/07 were considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: explaining how a computer program performs generating, recording, and reading steps. Examiner suggests changing "program" to –program making a computer execute a process--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1 and 5-9 are rejected under 35 U.S.C. 102(a) as being anticipated by Sako et al., US Patent Publication 2003/0161233.

Regarding claims 1 and 6-9, Sako et al. discloses in figure 10 a recording device, method, and a recording medium on which a program readable by a computer to make the computer execute a process is recorded for recording first encoded data at a high bit rate and second encoded data at a lower bit rate than that of said first encoded data, both encoded data corresponding to the same material data, on an information recording medium. Paragraph 0013 explains that different formats of data are used. The different formats are given in paragraphs 0029 and 0030 to consist of different recording densities. Thus, a different bit rate is necessary to encode both formats together as given in the invention of the reference. Sako discloses the recording device, method, and a recording medium comprising: first generation means (element 12 of figure 10 as explained in paragraph 0054) for encoding said material data input thereto so as to generate said first encoded data; second generation means (element 14 of figure 10 as explained in paragraph 0055) for encoding said material data input thereto so as to generate said second encoded data; recording means (elements 16-22 of figure 10) for recording said first encoded data generated by said first generation means and said second encoded data generated by said second generation means on said information recording medium in an alternate manner in terms of time (the switching unit of element 15 of figure 10 performs the function of alternating data to be recorded as explained in paragraph 0056); and readout means (element 31 of figure 11) for reading out said second encoded data recorded on said information recording medium while said recording means is recording any one of said first and second encoded data (paragraph 0012), , further comprising reproducing means (element 30 of figure 11) for decoding

(function performed by elements 35 and 36 of figure 11) and playing back said second encoded data read out by said readout means (element 31 of figure 11 as explained in paragraph 0062).

Regarding claim 5, Sako et al. discloses the recording device according to claim 1, wherein said recording means performs recording on said information recording medium in a CLV (Constant Linear Velocity) method (paragraphs 0062, 0065, and 0072 all give constant linear velocity as an example of the method).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sako et al. in view of Nozaki, US Patent 6,937,549.

Regarding claim 2, Sako et al. teaches the recording device according to claim 1, further comprising: storage means for storing said second encoded data recorded on said information recording medium by said recording means (shown in figure 5 and explained in paragraph 0038). Sako et al. does not but Nozaki teaches comparison means for comparing said second encoded means read out by said readout means with said stored second encoded data (column 11, lines 39-48 explain how the disc ID is compared and data is read out, which serves the same purpose). It would have been obvious to one of ordinary skill in the art at the time of the invention to include the

concept of the comparison means as taught by Nozaki into the system of Sako et al. The motivation would be to ensure quality of data before finalizing the disc (column 11, lines 29-38).

Regarding claims 3 and 4, Sako et al. teaches the limitations of claim 2. Sako et al. does not but Nozaki teaches the recording device, wherein said recording means rewrites said encoded data (column 11, lines 8-14) stored by said storage means (in non-volatile memory) on said information recording medium in accordance with a result of comparison by said comparison means (which determines whether or not to finalize the disc) in a separate unrecorded area (lead-in area) on said information recording medium if a plurality of successive results of comparison by said comparison means show that said data are not identical. The decision to write the data is based on whether or not the disc is finalized, which depends on the result of the comparison. Thus, both inventions serve the same purpose. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the concept of the comparison means as taught by Nozaki into the system of Sako et al. The motivation would be to ensure quality of data before finalizing the disc (column 11, lines 29-38).

Response to Arguments

4. Applicant's arguments with respect to all claims have been considered but are not persuasive.

Regarding claims 1 and 4, applicant contends that Ikeda does not teach reading out data while the recording is in progress. However, column 2, lines 18-44 explain that

data is continuously written. Lines 35-44 specifically explain how data is read out while the continuous recording is taking place.

Regarding claim 1, applicant contends that Ikeda does not teach recording first data at a high bit rate and second data at a lower bit rate than that of said first data, both data corresponding to a same material. However, column 2, lines 18-44 explain that data of one type is written at a speed not less than twice an average bit rate. Thus, some data is written at an average bit rate while other data is written at twice the average bit rate.

Regarding claims 1 and 5-9, applicant contends that Sako et al. is not prior art under U.S.C. 102(a). However, as no translation of foreign priority has been filed, Sako et al. is still prior art. If such documentation is filed, the rejection will be changed to U.S.C. 102(e). Any documentation filed after this point will still require further search and consideration.

Regarding claims 2-4, applicant contends that Nozaki is not prior art as both are assigned to Sony Corporation. However, no documentation has been filed to show this fact. Any documentation filed after this point will require further search and consideration.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Parul Gupta whose telephone number is 571-272-5260. The examiner can normally be reached on Monday through Thursday, from 8:30 AM to 7 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PHG
7/4/07

WAYNE YOUNG
SUPERVISORY PATENT EXAMINER